that this was the most serious injury of the liver he had ever operated and that the plaintiff was lucky to survive and be still alive. According to Dr. Levy, as a result of this injury he can only do the lightest of light work and his energy to do anything — even walking or eating — is very much less than it normally would be. The effect of this injury is that he is permanently incapable of working and is a mere shadow of a man. Taking into account the other injuries, which were in themselves serious such as some broken ribs and a fractured right tibia, the plaintiff must have undergone a lot of pain and suffering.

I have therefore to award what I consider is proper compensation for a man of 52 at the time of the accident who, as a result of the accident, has undergone a lot of pain and suffering, is now unemployable and has lost every single pleasure that human life can give. I would award him as general damages the sum of $35,000.

As regards special damage, for loss of earnings up to date I find the plaintiff is entitled to the sum of $5,200 to which sum must be added the sum of $32 claimed as transport to and from hospital.

There will therefore be judgment for the plaintiff for $40,232 and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Braddell Bros.*

LEE CHENG OO & ORS. v. CHINA INSURANCE CO. LTD.

[O.C.J. (Suffian J.) July 4, 1962]

[K.L. — Civil Suit No. 499 of 1961]

Insurance — Cancellation of policy — Premium paid to canvasser for authorised agent — Accident to vehicle.

The plaintiffs, timber merchants, bought a lorry on hire-purchase from Orchard Motors through one L, the latter's Assistant Sales Manager. L then, saying that he was an agent of the defendants, got the managing partner of the timber merchants to agree to take out a policy with the defendants. The usual proposal form of the defendants, the completion of which was the prerequisite to the issue of a policy by them was not produced at the trial and the managing partner of the plaintiffs, who knew no English, could not remember if he filled in and signed such a form. L informed one C, an authorised agent of the defendant company, of the managing partner's intention to insure the lorry with the defendants. Sometime later a formal policy was issued through C to L to the managing partner. The managing partner had no contact with C or anybody in the defendant company. Subsequently, the defendants wrote to the plaintiffs on May 3, 1961 stating that the premium in respect of the policy was overdue and that unless the premium was paid within seven days the policy would be cancelled. The plaintiffs' managing partner did not send the company the amount stated (as this had already been paid to L) on May 11, 1961 the company cancelled the policy. The plaintiffs wrote to them on May 18, 1961 stating that unless the *pro rata* rebate due on cancellation under condition 7 of the policy was returned, the letter of May 3, 1961 had no effect. This letter also stated that the premium had been paid to L. The defendants received this letter on May 19, 1961. On May 18, 1961 the lorry was involved in an accident from which it emerged almost a total wreck. On the question arising whether or not the policy was in force at the time of the accident on May 18, 1961,

Held: as C had no authority to appoint L as the company's agent or sub-agent, payment by the plaintiffs to L was not payment to the company, following *Attorney-General for Ceylon* v. *A.D. Silva* (1), therefore the cancellation of the policy by the defendants' manager on the plaintiffs' failure to remit the premium seven days after the letter of May 3, 1961 was valid and the policy was effectively cancelled.

Case referred to:—

(1) *Attorney-General for Ceylon* v. *A.D. Silva* [1953] A.C. 461, 479.

The following authorities were also cited in argument: *MacGillivray* on Insurance Law, 5th Edn., Vol. I, p. 744; Vol. II p. 1981; Contracts (Malay States) Ordinance 14 of 1950, ss.143, 144, 146, 188; *Halsbury's* Laws, 3rd Edn. vol. 22, paras. 382, 474; *Sarkar* on Evidence, 10th Edn., p. 809, last paragraph; *Powell* on Law of Agency, 1951 Edn. p. 248; *Bowstead* on Agency, 12th Edn. article 41; *William Mackersy* v. *Ramsays, Bonars & Co.* 8 E.R. 628; *Matthews* v. *Haydon Gent* 170 E.R. 437; *Sun Fire Office* v. *Hart* (1889) 14 App. Cas. 98, 100; *Lee Beng Choon* v. *Tan Ngiap Kee*, p. 315, *post.*

CIVIL SUIT.

Henry Cheah for the plaintiffs.

E. C. Khoo for the defendants.

Cur. Adv. Vult.

Suffian J.: Five persons carrying on business as timber merchants bought a lorry BG 1151 on hire-purchase from Orchard Motors through Loke, the latter's assistant sales manager. He had authority from Orchard Motors to help their customers to effect insurance on their vehicles. He brought up with P.W.1, the timber merchants' managing partner, the question of insuring this lorry, saying that he was an agent of the defendant company and that P.W.1 could take out a policy with the company through him. P.W.1 agreed to take out a policy with the company.

Before the defendant company issue a policy they insist on the insured filling in, signing and submitting a proposal form which is the basis of the contract with the insured. The proposal form in this case has not been produced. P.W.1 does not remember if he filled in and signed such a form. If filled in in English which he cannot read or write, he could not have done it himself. His counsel suggested that probably it was signed by Loke, as was D.8 the proposal form in respect of BG 395, another lorry belonging to the plaintiffs and also insured with the defendant company.

Loke informed Chen, P.W.5, an authorised agent of the defendant company, of P.W.1's decision to insure with them. Chen had authority to issue and at once issued the cover note P.2.

On 17th April, 1961, the company issued a formal policy P.3. They gave it to Chen, who gave it to Loke, who gave it to P.W.1.

P.W.1 never saw Chen or anybody in the defendant company; throughout he dealt only with Loke.

Subsequently Chen told the company that he had not received the premium for this policy and so by letter dated 3rd May, 1961, exhibit A.8, the company wrote to the plaintiffs as follows:—

" Dear Sir,

Policy No. MV. 713853
Covering Vehicle No. BG. 1151 & T/B. 809

This serves to inform you that the premium in respect of the above Policy amounting to $518.75 is still outstanding and which is now considerably overdue.

Your attention is drawn to the fact that provided the premium is paid to the Company the policy will not take effect and automatically become void.

Unless the said sum is remitted to us within seven (7) days from date hereof the above Policy will be cancelled and on termination of which the Registrar of Motor Vehicles will be advised accordingly.

Kindly give the matter your immediate attention."

As P.W.1 had paid Loke the premium, he did not send the company the amount stated in the above letter.

On 11th May, 1961, the company cancelled the policy.

Not until 18th May, 1961, did the plaintiffs bother to communicate with the company, to whom they then sent this letter, exhibit A.17:—

" Dear Sirs,

Policy No. MV. 713853

We are in receipt of your letter advising us that you intend to cancel the above policy. We regret that unless you return to us the pro rata rebate due on cancellation of the policy we consider your letter to have no effect. The premium was paid to your agent, Mr. Loke Kui Kuen."

On that date — it is not clear whether before or after the letter had been written — this lorry was involved in an accident from which it emerged almost a total wreck. This letter was received by the company on 19th May, 1961.

The plaintiffs' claim is as follows. Chen was the company's authorised agent. Loke was either employed by Chen or was Chen's agent and therefore the company's agent or sub-agent. Payment to Loke of the premium was payment to the company. The company is estopped from denying receipt of this payment. The company can only cancel the policy under its condition 7 which reads:—

" 7. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at the last known address and in such event will return to the Insured the premium paid less the pro rata portion thereof for the period the Policy has been in force....."

Before or when cancelling, the company must refund the premium or a portion thereof. No such refund was made either before, at the time of or indeed after the cancellation and therefore the policy had not been validly cancelled, at the time of the accident it was still in force and the company should indemnify the plaintiffs against damage to the lorry under the policy. In argument it is also contended that if in fact no premium has been paid the company cannot cancel the policy, because condition 7 speaks of cancellation *and* refunding to the insured the premium or part thereof.

The company admit that they issued the policy effective from 7th April, 1961, but contend that their authorised agent Chen had no authority to appoint Loke as a sub-agent, Loke was not their agent or sub-agent, payment to him was not payment to them, they had a right to cancel the policy under condition 7, on 3rd May, 1961, they gave the appropriate notice to cancel it for non-payment of premium, on 11th May it was cancelled for non-payment of premium, at the time of the accident on 18th May, 1961, the policy was no longer in force and therefore they are not liable to indemnify the plaintiffs for the damage to the lorry. Returning the premium or a portion thereof was not a condition precedent but a consequence of cancellation. In any event, how could it be returned when the company had never received it?

Counsel cannot agree on the issues. Inche' Cheah, for the plaintiffs, says that the sole issue is this: has the premium been paid to the company? If there has been payment to the company's authorised agent such as Loke, he says, then that was payment to the company, and the company should indemnify the insured for the damage. Inche' Khoo says that there are two issues:

(1) Is payment or the purported payment by the plaintiffs to Loke binding on the defendant?

(2) Has the policy P.3 been effectively cancelled before the accident?

On the pleadings and considering the evidence in my judgment there is only one issue, namely, whether or not the policy was in force at the time of the accident on 18th May, 1961.

Payment of premium (it is agreed) was not a condition precedent of this policy which came into force if the plaintiffs had merely agreed to pay, see its preamble. Here, even if the premium had not been paid to the company, it was beyond dispute that the plaintiffs had agreed to pay. If the policy was in force from 7th April, 1961, as is admitted, the question arises whether it was in force at the time of the accident. Condition 7. in my view, empowers the company to cancel the policy for any or no reason, but they elected to cancel it for non-payment of premium. On the question whether or not the premium has been paid to the company, Chen was no doubt the company's authorised agent and he in turn arranged for Loke to canvass business for him. Loke no doubt held himself out to P.W.1 as the company's agent and I find for a fact that P.W.1 paid Loke the premium due under the policy, but neither the company nor Chen ever saw the colour of this money. But there was no representation by the company at any time that Loke was their agent. Throughout, the company dealt only with Chen, never with Loke, and Chen had no authority to appoint Loke as the company's agent or sub-agent. In

Attorney-General for Ceylon v. *A. D. Silva* [1], their Lordships of the Privy Council said:

"All ostensible authority involves a representation by the principal as to the extent of the agent's authority. No representation by the agent as to the extent of his authority can amount to a 'holding out' by the principal."

In view of this authority, I hold that payment by the plaintiffs to Loke was not payment to the company.

I do not accept the plaintiffs' argument that if in fact no premium has been paid, the company cannot cancel the policy, for the company's rights vis-a-vis a defaulting policyholder cannot be less than their rights vis-a-vis a policyholder who has paid his premium. Nor do I accept the plaintiffs' argument that it is a condition of cancellation that a refund of the premium or a portion thereof must precede or accompany the notice to cancel. In my view the refund is only a consequence flowing from the act of cancellation. The words "and in such event [i.e., cancellation, the Company] will return" in the condition make this quite plain.

The letter dated 3rd May, 1961, from the company to the plaintiffs stated: "Unless the [premium] is remitted to us within seven (7) days from the date hereof, the policy will be cancelled....." The company's manager, D.W.1, said that on failure by the plaintiffs to remit within the stipulated seven days the policy was accordingly cancelled. This was done, according to the company's letter dated 6th July, 1961, to the plaintiffs' solicitor, on 11th May, 1961. To cancel this policy the company did two separate acts: first, they wrote the letter of 3rd May, 1961, and, secondly, they cancelled the policy on 11th May, 1961, after the expiry of the stipulated period. In my judgment this did not nullify the purported cancellation under condition 7 under which only a single act, namely, of sending the requisite notice was sufficient.

Accordingly I hold that by the time of the accident the policy had been effectively cancelled and was no longer in force.

For the above reasons I would dismiss this claim with costs.

Claim dismissed.

Solicitors: *Allen & Gledhill; George & Khoo.*

PUBLIC PROSECUTOR v. WONG YIN NAM

[A. Cr. J. (Ong J.) July 5, 1962]

[K.L. — Criminal Appeal No. 25 of 1962]

Gaming — Numbers lottery — Prevalence of — Hierarchy of operators — Main consideration — Common Gaming Houses Ordinance, 1953, s.4(1)(c).

Criminal Law and Procedure — Public lottery — Prevalence of offence — Sentence — Inadequacy.

The various types of offences as set out in paragraphs (a) to (h) of section 4(1) of the Common Gaming Houses Ordinance, 1953 cover an exceedingly wide range, and an amount of fine which is proper and reasonable for one may be inadequate or excessive for another. Nevertheless a fine of only 2% of the maximum is manifestly inadequate in the absence of special extenuating circumstances.

The position of the accused in the hierarchy of operators of the numbers lottery is the main consideration and not the smallness of the bets disclosed.

CRIMINAL APPEAL.

Mohamed Isa bin Ibrahim (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong J.: The appellant was, upon his own plea of guilty, convicted and fined the sum of $100 for an offence of assisting in carrying on a public lottery in contravention of section 4(1)(c) of the Common Gaming Houses Ordinance, No. 26 of 1953. The Public Prosecutor appeals against the inadequacy of the sentence on the grounds of prevalence of the offence, public scandal and the public interest. In my view, however, the only relevant consideration in this case is that the maximum punishment authorised by section 4(1) extends to imprisonment for 12 months or a fine of $5,000 or both. The various types of offences, as set out in paragraphs (a) to (h) cover an exceedingly wide range, and an amount of fine which is proper and reasonable for one may be inadequate or excessive for another. Each case therefore must be considered in the light of its own facts. Nevertheless, a fine of only 2 per cent of the maximum seems manifestly inadequate in the absence of special extenuating circumstances.

The numbers lottery is undoubtedly prevalent and also profitable. The position of the accused in the hierarchy of operators of this type of lottery is, in my view, the main consideration and not the smallness of the bets disclosed as the arrest might have occurred early in the day. The fact, however, that the appellant is a first offender, needs to be taken into account. Accordingly, I have increased the fine to $250 with a warning of the consequences of a second offence.

Sentence enhanced.

AIK TEONG TRADING CO. v. NATIONAL UNION FIRE INSURANCE CO.

[O.C.J. (Hepworth J.) July 9, 1962]

[Penang — Civil Suit No. 131 of 1961]

Insurance — "Warehouse to warehouse" policy of marine insurance — Loss of goods as a result of collision at sea — Waves caused by passing steamer — Whether loss due to perils insured against — Whether loss fortuitous — Institute Cargo Clauses (W.A.) of January 1, 1958 — Interpretation of — General principles of construction of marine insurance policies — Severance of contract — Whether value of goods lost can be calculated.

The plaintiffs were interested in a "warehouse to warehouse" policy of marine insurance made between the defendants and one C.T.C. of Bangkok whereby the defendants insured 7 cases of Siam Swallow Nests packed in the usual customary packings valued at $127,600 in the steamer *s.s. Hock Lee* at and from